

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CYBER CHAMPION INTERNATIONAL
LIMITED,

-vs-

DOCKET NO.: CV-07-9503 (LAK)
New York, New York
June 3, 2008

CARLOS FALCHI, et al.,

Defendants
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TRANSCRIPT OF CIVIL CAUSE FOR SETTLEMENT CONFERENCE

BEFORE THE HONORABLE DOUGLAS F. EATON
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

For the Plaintiff:

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For the Defendants

For Carlos Falchi:

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Audio Operator:

No Audio Operator

Proceedings Recorded by Electronic Sound Recording
Transcript Produced by Transcription Service
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1 ADDITIONAL APPEARANCES

2 For the Defendants

3 For Marcos Falchi:

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BRIAN M. GAYNOR, ESQ.
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1 THE COURT: All right. I'm calling the case of Cyber
2 Champion International Limited versus Carlos Falchi, et al.

3 Who's here for plaintiff?

4 MR. LAZARUS: Harlan Lazarus, Your Honor, the law
5 firm of Lazarus & Lazarus P.C.

6 To my right is Carissa Schumacher [phonetic], a
7 paralegal with my office, and to her right is John Khuu, who is
8 here representing the plaintiff, Cyber Champion. That's K H U
9 U.

10 THE COURT: Okay. Welcome.

11 Your title at Cyber is --?

12 MR. KHUU: I'm one of the directors at Cyber.

13 THE COURT: One of the directors, okay.

14 MR. KHUU: Yes.

15 THE COURT: All right.

16 And who's here for Carlos Falchi?

17 MR. YELLEN: Good morning, Your Honor. My name is
18 Dwight Yellen, Ballon Stoll Bader & Nadler, for defendant
19 Carlos Falchi. And with me is George Kachejian, who is acting
20 CFO, shall we say, of the Falchi company.

21 Mr. Falchi is available by phone. He is in Los
22 Angeles. He's available by phone. And both myself and Mr.
23 Kachejian do have authority.

24 THE COURT: Okay.

25 Could I get the spelling of your last name, please?

1 MR. YELLEN: Oh, yeah.

2 MR. KACHEJIAN: Mine? K A C H E J I A N.

3 THE COURT: Good.

4 And who's here for defendant Marcos Falchi?

5 MR. GAYNOR: Brian Gaynor, Your Honor, the law firm
6 of Maldjian & Fallon, and to my left is the individual
7 defendant, Marcos Falchi.

8 THE COURT: Hi. Okay. All right.

9 I have read the confidential ex parte letters from
10 each side, from three attorneys. And one question I had was
11 how old are the Falchi brothers, how long have they each been
12 in business? I'm just trying to get some idea here -- Marcos
13 we know best.

14 MR. M. FALCHI: May I answer it?

15 THE COURT: Sure.

16 MR. M. FALCHI: Yes, Your Honor. My name is Marcos
17 Falchi. I have been in the handbag business for thirty years.
18 My family have been in the design business for much longer than
19 that. We go back to 1500s with the Medici family.

20 THE COURT: All right.

21 MR. M. FALCHI: We run design house.

22 THE COURT: And how old are you, and how old is your
23 brother?

24 MR. M. FALCHI: I am fifty-six, and my brother is
25 sixty-three.

1 THE COURT: Thank you. Okay. And he has been in the
2 design business, Carlos Falchi, but perhaps in a slightly
3 different line? I don't know if this is important.

4 MR. M. FALCHI: Carlos has been in the design
5 business for forty years, over forty years. And he designs
6 accessories, leather goods and bags, shoes, apparel, home
7 furnishings -- very talented man, very hard working, and well
8 recognized amongst his peers, amongst the industry.

9 He has been awarded the Coty Award for best designer.
10 He has been awarded the Lifetime Achievement Award by the
11 Council of Fashion Designers of America. He has been awarded
12 Designer of the Year several times. He's a well recognized
13 talent in this industry.

14 THE COURT: Okay. All right.

15 I think that I will start with plaintiff and I'll ask
16 the defense teams to be patient. I'll get to you as soon as
17 possible. We only hold one settlement conference, and everyone
18 is under time pressures from Judge Kaplan. As I understand it,
19 on Monday, June 9, the parties have to make their expert
20 disclosures, and one month after that they have to complete all
21 discovery, and August 4 is the deadline for a joint pretrial
22 order and ready trial date.

23 So we have to avoid baby steps here and see if there
24 is a chance for bridging a very large gap and settling this
25 case. All right.

1 I'll start with Mr. Lazarus, Mr. Khuu, and Mr. --

2 (Recorder off/recorder on)

3 THE CLERK: Okay.

4 THE COURT: All right. The date is June 3, 2008.
5 It's three fifty. I have been holding a settlement conference
6 since a little before eleven a.m. The docket number is oh-
7 seven civil nine five oh three, referred to me by Judge Kaplan.

8 Cyber Champion International is the plaintiff,
9 represented by attorney Harlan M. Lazarus. And also present
10 throughout the negotiations has been Mr. John Khuu, one of the
11 directors of the plaintiff.

12 And the first named defendant is Carlos Falchi. He
13 has been in Los Angeles, has been in phone contact with his
14 attorney, Dwight Yellen of the Ballon Stoll law firm, and
15 present throughout the negotiations have been George Kachejian,
16 and also Marcos Falchi, who is a defendant who is represented
17 here by attorney Brian Gaynor of the law firm of Maldjian &
18 Fallon.

19 All of those people are here in Courtroom 18-A, and I
20 believe we have reached a settlement agreement. I'm going to
21 turn the floor over to Mr. Dwight Yellen. I'll ask everyone to
22 listen closely while he states what he believes are the terms
23 of the settlement agreement. And when he's done talking, I'm
24 going to ask each other person whether Mr. Yellen has
25 accurately stated the terms of the settlement agreement. All

1 right.

2 Mr. Yellen?

3 MR. YELLEN: Thank you, Your Honor.

4 The matter is settled on the following terms and
5 conditions. Title to the marks, Carlos Falchi marks, worldwide
6 will be conveyed to Carlos on payment of two point five million
7 dollars, payable as follows. First payment on or before
8 September 2nd, 2008 of a million dollars. Second payment on or
9 before December 15th of 2008 of one point five million dollars.

10 If, however, the second payment for one point five
11 million dollars cannot be made, stretch-out payments will be
12 made as follows -- two hundred and fifty thousand dollars on
13 December 15th, 2008, five hundred thousand dollars on March 15,
14 2009, three hundred and fifty thousand dollars on June 15,
15 2009, three hundred and fifty thousand dollars on September 15,
16 2009, three hundred thousand dollars on December 15, 2009.

17 After the first payment of a million dollars is made,
18 plaintiff has a lien on the marks till whatever final payment
19 is made, and the lien is applied to whoever owns the mark,
20 because Mr. Falchi will have the right to put the ownership of
21 the marks in some entity of his choosing.

22 After the first payment of a million dollars, all
23 TTAB proceedings will be withdrawn.

24 All parties will exchange appropriate releases.

25 THE COURT: What's the time table for the exchange of

1 appropriate releases?

2 MR. YELLEN: They'll be exchanged in escrow until the
3 first payment is made, at which point the -- when I say
4 appropriate, I mean they'll carve out the remaining payments.

5 THE COURT: So these will be signed perhaps in the
6 next two weeks, but --

7 MR. YELLEN: We contemplate --

8 THE COURT: -- placed in escrow.

9 MR. YELLEN: We contemplate within the next two weeks
10 doing further documentation. To wit, it would be an assignment
11 of trademark in escrow, promissory notes in escrow, and a
12 security -- a trademark security agreement in escrow.

13 Where was I? Payments will go to Mr. Lazarus.

14 There will be a five-day business -- five business-
15 day cure provision in all the provisions, and notice will be
16 given to respective counsel.

17 Now, all -- I think I said that already. In the
18 event that the September 1st payment is not made, plaintiff
19 will receive judgment against Carlos in the amount of a million
20 dollars, and both plaintiff and Marcos Falchi agree not to use
21 the Chi by Falchi mark until such time as -- actually, I'm a
22 little unclear on this point. I apologize. It has to do with
23 the use of Carlos involving himself in the Chi & Chi sales.

24 And I don't know when the cutoff on that is, so let's
25 put that in brackets for now, and we'll -- because there will

1 be other points I'm sure Mr. Lazarus will want to address.

2 Papers that we contemplate drafting will not
3 contradict this digital recording.

4 Jurisdiction will be consented to in the city and
5 county of New York, either the state or federal court.

6 And in the event that we use the stretch-out
7 payments, the Falchis have the right to designate substitute
8 collateral in lieu of the trademarks, subject to plaintiff's
9 consent, which shall not be unreasonably withheld.

10 I think I got it all.

11 MR. LAZARUS: Well, if -- if I may, Harlan Lazarus.
12 If the September 2nd payment is not made, I have the right to
13 go to the clerk's office of this court with a million dollar
14 judgment against Carlos Falchi.

15 If the million dollar payment is not made on
16 September 2nd, no party will be entitled to use the Chi by
17 Falchi mark -- no party meaning in particular Marcos Falchi or
18 his privies, Carlos Falchi or his privies, and, more
19 pertinently, Cyber Champion or its privies. That usage will be
20 withdrawn by all parties forever on a September 2nd default.

21 If there is a subsequent default after September 2nd
22 in the monetary payments, and to the extent that Marcos Falchi
23 was using the Chi by Falchi mark, Marcos Falchi, on such a
24 monetary default, will also cease the use of the Chi by Falchi
25 mark on any subsequent default.

1 If there is a default on September 2nd or at any time
2 thereafter, Carlos Falchi will not publicly associate himself
3 with the Chi mark then in use, C H I Exclusive, by Marcos -- by
4 Marcos Falchi or his privies, meaning, in particular,
5 television appearances, promotional appearances, print
6 advertisement, and the like.

7 Just give me a moment. That's just to be clear. I'm
8 not sure it was said, but I want to repeat it if it wasn't. It
9 is that the obligations under this agreement will be secured by
10 a -- the obligations after the million dollar payment will be
11 secured by -- on the September 2nd payment -- will be secured
12 by a lien on the Carlos Falchi registrations with respect to
13 which the document that we're going to prepare is going to
14 provide that if, as, and when there's a foreclosure by Cyber
15 Champion, a secured party, Carlos Falchi, his privies, Marcos
16 Falchi, his privies, the party that does sign the note and its
17 privies -- if I have -- if Cyber has to take back the mark as a
18 secured creditor, Marcos, Carlos, the note signer, their
19 privies, et cetera, forever withdraw and abandon any claims to
20 the Carlos Falchi marks.

21 That's a forever deal. It is not going to get
22 challenged again if we had to take it back.

23 Did I miss anything?

24 (Off the record discussion)

25 MR. LAZARUS: Mr. Khuu points out that the technical

1 aspect of how to deal with the TTAB proceedings we need to
2 discuss --

3 MR. GAYNOR: Agreed.

4 MR. LAZARUS: -- to accomplish the --

5 MR. YELLEN: We will accomplish that.

6 MR. GAYNOR: I just want to clarify -- I just want to
7 make sure on the record that upon the first payment --

8 THE COURT: Yes, Mr. Gaynor, go ahead.

9 MR. GAYNOR: It's Brian Gaynor. Sure, sorry. With
10 the first payment on September 2nd, that all Carlos Falchi
11 marks will be assigned to Mr. Falchi. And in the event of a
12 default on September 2nd or any time thereafter, Marcos does
13 agree that he will not use Chi by Falchi, but he is allowed to
14 use the mark Chi by itself or any variation thereof that does
15 not include the term Falchi or any variation thereof.

16 THE COURT: So all the Carlos marks will be assigned
17 to Carlos Falchi.

18 MR. GAYNOR: Correct.

19 MR. YELLEN: Yes.

20 MR. GAYNOR: And there will be no lien on the Chi by
21 Falchi marks during any period of the payment history.

22 MR. LAZARUS: That's correct, and just to say it
23 again, what I -- what Carlos Falchi marks are assigned to you
24 title-wise are then going to be subject of my lien.

25 MR. GAYNOR: Correct.

1 MR. LAZARUS: My client's lien. And in terms of Chi
2 by Falchi, it's the agreement that upon any monetary default at
3 any time, use of Chi by Falchi will cease. But Chi may be used
4 in perpetuity.

5 MR. GAYNOR: Correct.

6 THE COURT: And quotes should surround those two
7 trademarks, one quote -- quotation is, quote, Chi by Falchi,
8 close quote. Another trademark is, quote, Chi, close quote.

9 MR. LAZARUS: Correct.

10 MR. GAYNOR: Correct.

11 THE COURT: Okay. All right.

12 All three lawyers have stated what they believe the
13 terms of the settlement agreement are. I'm turning now to John
14 Khuu, one of the directors of Cyber Champion International.

15 Mr. Khuu, have the attorneys accurately stated the
16 terms of the settlement agreement?

17 MR. KHUU: Yes.

18 THE COURT: And are you authorized to make that
19 statement on behalf of Cyber Champion International?

20 MR. KHUU: Yes, I am.

21 THE COURT: All right.

22 Let me turn now to Marcos Falchi.

23 Mr. Falchi, have the attorneys accurately stated the
24 terms of the settlement agreement?

25 MR. M. FALCHI: Yes, they have, Your Honor.

1 THE COURT: All right.

2 And does anyone else want to make any comments before
3 we turn off the recorder?

4 MR. LAZARUS: Yes, Your Honor. I hope I didn't
5 disturb the Court, but I asked Mr. Yellen to -- for a date
6 certain by which the defendants would advise whether I'm going
7 to receive a million five on December 15th or they're going to
8 opt for plan B, which is the payout. Mr. Yellen proposed, and
9 I accept, December 1.

10 THE COURT: All right. So on or before December 1,
11 2008, the defendants through Mr. Yellen will notify the
12 plaintiff through Mr. Lazarus whether the defendants are going
13 to make a second lump sum payment of one point five million or
14 whether they are going to opt for the stretch-out plan, which
15 will add up to installment payments of one point seven five
16 million. Is that correct?

17 MR. YELLEN: That is correct, Your Honor.

18 THE COURT: Okay.

19 I have shown to the attorneys a one-page form that I
20 generally use for an order of discontinuance, and I was
21 thinking that we might set a date something like June 30 for
22 restoration of the case to the calender of the district judge
23 if this settlement is not effectuated.

24 But Mr. Lazarus in particular said that he wanted to
25 hold off on agreeing to this order of discontinuance until next

1 week. I'm going to be out at the judicial conference on
2 Thursday and Friday, and so on the week of Monday, June 9th,
3 the attorneys will advise me whether they are agreeable to have
4 me sign this order of discontinuance or whether they want some
5 changes in the language, or whether they want to submit some
6 similar order for the signature of the district judge, Judge
7 Kaplan. All right.

8 If there's nothing further, I think everyone can be
9 excused.

10 MR. YELLEN: Thank you very much, Your Honor.

11 MR. GAYNOR: Thank you, Your Honor.

12 MR. LAZARUS: Thank you very much, Your Honor.

13 THE COURT: You're welcome. All right. I don't
14 think I have anybody's papers, so I will just wait to hear on
15 the order of discontinuance, and I'll hold off notifying Judge
16 Kaplan.

17 * * * * *